

1 Plaintiff Oakley, Inc. (“Oakley”) hereby complains of Thermor Ltd.
2 (“Thermor”), Fry’s Electronics, Inc. (“Fry’s”) , Best Buy Co., Inc. (“Best Buy”),
3 Tool King LLC d/b/a Toolking.com (“Toolking.com”), Laptop Travel, LLC
4 (“Laptop Travel”), Beach Trading Co., Inc. d/b/a Buydig.com (“Buydig.com”)
5 (collectively “Defendants”) and alleges as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This Court has subject matter jurisdiction over this action pursuant
8 to 28 U.S.C. § 1331 and 1338, as it arises under the patent laws of the United
9 States.

10 2. This Court has personal jurisdiction over Defendants because
11 Defendants have a continuous, systematic, and substantial presence within this
12 judicial district including by selling and offering for sale infringing products in
13 this judicial district, and by committing acts of patent infringement in this
14 judicial district, including but not limited to selling infringing eyewear directly
15 to consumers and/or retailers in this district and selling into the stream of
16 commerce knowing such products would be sold in California and this district,
17 which acts form a substantial part of the events or omissions giving rise to
18 Oakley’s claim.

19 3. Venue is proper in this judicial district under 28 U.S.C. §1391 (b)
20 and (c), and 28 U.S.C. §1400(b).

21 **II. THE PARTIES**

22 4. Oakley is a corporation organized and existing under the laws of
23 the State of Washington, having its principal place of business at One Icon,
24 Foothill Ranch, California 92610.

25 5. Oakley is informed and believes, and thereon alleges, that
26 Defendant Thermor is a company organized and existing under the laws of
27 Canada, having its principal place of business at 16975 Leslie Street,
28 Newmarket, ON, L3Y 9A1.

1 6. Oakley is informed and believes, and thereon alleges, that
2 Defendant Fry's is a company organized and existing under the laws of the state
3 of California, having its principal place of business at 600 E. Brokaw Road, San
4 Jose, CA 95112.

5 7. Oakley is informed and believes, and thereon alleges, that
6 Defendant Best Buy is a company organized and existing under the laws of the
7 state of Minnesota, having its principal place of business at 7601 Penn Avenue
8 S., Richfield, MN 55423.

9 8. Oakley is informed and believes, and thereon alleges, that
10 Defendant Toolking.com is a company organized and existing under the laws of
11 the state of Minnesota, having its principal place of business at 11111 West 6th
12 Avenue, Unit D, Lakewood, CO 80215.

13 9. Oakley is informed and believes, and thereon alleges, that
14 Defendant Laptop Travel is a company organized and existing under the laws of
15 the state of Minnesota, having its principal place of business at 10200 73rd
16 Avenue N #120, Maple Grove, MN 55369.

17 10. Oakley is informed and believes, and thereon alleges, that
18 Defendant Buydig.com is a company organized and existing under the laws of
19 the state of Minnesota, having its principal place of business at 80 Carter Drive,
20 Edison, NJ 08817.

21 11. Oakley is informed and believes, and thereon alleges, that
22 Defendants have committed the acts alleged herein within this judicial district.

23 **III. GENERAL ALLEGATIONS**

24 12. Oakley has been actively engaged in the manufacture and sale of
25 high quality eyewear since at least 1985. Oakley is the manufacturer and
26 retailer of several lines of eyewear that have enjoyed substantial success and are
27 protected by various intellectual property rights owned by Oakley.

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1 13. On June 20, 2006, the United States Patent and Trademark Office
2 duly and lawfully issued United States Design Patent No. D523,461 (“the D461
3 Patent”), entitled “EYEGLASS COMPONENT.” Oakley is the owner by
4 assignment of all right, title, and interest in the D461 Patent. A true and correct
5 copy of the D461 Patent is attached hereto as Exhibit A.

6 14. Defendants manufacture, use, sell, offer for sale and/or import into
7 the United States eyewear that infringe Oakley’s patent rights.

8 **IV. CLAIM FOR RELIEF**

9 (Patent Infringement)

10 (35 U.S.C. § 271)

11 15. Oakley repeats and re-alleges the allegations of paragraphs 1-14 of
12 this Complaint as if set forth fully herein.

13 16. This is a claim for patent infringement under 35 U.S.C. § 271.

14 17. Thermor, through its agents, employees and servants, have, and
15 continue to, knowingly, intentionally and willfully directly infringe, engage in
16 acts of contributory infringement, and/or induce the infringement of the D461
17 Patent by directly and/or indirectly making, using, selling, offering for sale
18 and/or importing eyewear which are covered by the D461 Patent, including for
19 example, Thermor’s *BIOS Eyewear Cam*.

20 18. Fry’s, through its agents, employees and servants, have, and
21 continue to, knowingly, intentionally and willfully directly infringe, engage in
22 acts of contributory infringement, and/or induce the infringement of the D461
23 Patent by directly and/or indirectly making, using, selling, offering for sale
24 and/or importing eyewear which are covered by the D461 Patent, including for
25 example, Fry’s *BIOS Eyewear Cam*.

26 19. Best Buy, through its agents, employees and servants, have, and
27 continue to, knowingly, intentionally and willfully directly infringe, engage in
28 acts of contributory infringement, and/or induce the infringement of the D461

1 Patent by directly and/or indirectly making, using, selling, offering for sale
2 and/or importing eyewear which are covered by the D461 Patent, including for
3 example, Best Buy's *Thermor – BIOS Eyewear Cam*.

4 20. Toolking.com, through its agents, employees and servants, have,
5 and continue to, knowingly, intentionally and willfully directly infringe, engage
6 in acts of contributory infringement, and/or induce the infringement of the D461
7 Patent by directly and/or indirectly making, using, selling, offering for sale
8 and/or importing eyewear which are covered by the D461 Patent, including for
9 example, Toolking.com's *Thermor 604FC BIOS Eyewear Action Camera*.

10 21. Laptop Travel, through its agents, employees and servants, have,
11 and continue to, knowingly, intentionally and willfully directly infringe, engage
12 in acts of contributory infringement, and/or induce the infringement of the D461
13 Patent by directly and/or indirectly making, using, selling, offering for sale
14 and/or importing eyewear which are covered by the D461 Patent, including for
15 example, Laptop Travel's *BIOS Eyewear Action Cam*.

16 22. Buydig.com, through its agents, employees and servants, have, and
17 continue to, knowingly, intentionally and willfully directly infringe, engage in
18 acts of contributory infringement, and/or induce the infringement of the D461
19 Patent by directly and/or indirectly making, using, selling, offering for sale
20 and/or importing eyewear which are covered by the D461 Patent, including for
21 example, Buydig.com's *Thermor LTD 604FC BIOS Eyewear Outdoor Action*
22 *Camera*.

23 23. Defendants' acts of infringement of the D461 Patent were
24 undertaken without permission or license from Oakley. Defendants had actual
25 and/or constructive knowledge of the D461 Patent, and their actions constitute
26 willful and intentional infringement of the D461 Patent. Defendants infringed
27 the D461 Patent with reckless disregard of Oakley's patent rights. Defendants
28 knew, or it was so obvious that Defendants should have known, that their

1 actions constituted infringement of the D461 Patent. Defendants' acts of
2 infringement of the D461 Patent were not consistent with the standards of
3 commerce for their industry.

4 24. As a direct and proximate result of Defendants' patent
5 infringement, Defendants have derived and received gains, profits, and
6 advantages in an amount not presently known to Oakley.

7 25. Pursuant to 35 U.S.C. § 284, Oakley is entitled to damages for
8 Defendants' infringing acts and treble damages together with interests and costs
9 as fixed by this Court.

10 26. Pursuant to 35 U.S.C. § 289, Oakley is entitled to Defendants' total
11 profits from the sale of eyewear that infringe any one of Oakley's design
12 patents.

13 27. Pursuant to 35 U.S.C. § 285, Oakley is entitled to reasonable
14 attorneys' fees for the necessity of bringing this claim.

15 28. Due to the aforesaid infringing acts, Oakley has suffered great and
16 irreparable injury, for which Oakley has no adequate remedy at law.

17 29. Defendants will continue to directly and/or indirectly infringe the
18 D461 Patent to the great and irreparable injury of Oakley, unless enjoined by
19 this Court.

20 **WHEREFORE**, Oakley prays for judgment in its favor against
21 Defendants for the following relief:

22 A. An Order adjudging each of Defendants to have willfully infringed
23 the D461 Patent under 35 U.S.C. § 271;

24 B. A preliminary and permanent injunction enjoining Defendants,
25 their respective officers, directors, agents, servants, employees and attorneys,
26 and those persons in active concert or participation with Defendants, from
27 directly or indirectly infringing the D461 Patent in violation of 35 U.S.C. § 271;
28

1 C. That Defendants account for all gains, profits, and advantages
2 derived by Defendants' infringement of the D461 Patent in violation of
3 35 U.S.C. § 271, and that Defendants pay to Oakley all damages suffered by
4 Oakley and/or Defendants' total profit from such infringement pursuant to 35
5 U.S.C. § 289;

6 D. An Order for a trebling of damages and/or exemplary damages
7 because of Defendants' willful conduct pursuant to 35 U.S.C. § 284;

8 E. An Order adjudging that this is an exceptional case;

9 F. An award to Oakley of the attorney fees, expenses, and costs
10 incurred by Oakley in connection with this action pursuant to 35 U.S.C. § 285;

11 G. An award of pre-judgment and post-judgment interest and costs of
12 this action against Defendants;

13 H. That Oakley have and recover the costs of this civil action,
14 including reasonable attorneys' fees;

15 I. An award of pre-judgment and post-judgment interest and costs of
16 this action against Defendants; and,

17 J. Such other and further relief as this Court may deem just and
18 proper.

19 Respectfully submitted,

20 KNOBBE, MARTENS, OLSON & BEAR, LLP
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22 Dated: February 13, 2014 By: /s/ Ali S. Razai

23 Michael K. Friedland
24 Ali S. Razai
25 Samantha Y. Hsu
26 Attorneys for Plaintiff Oakley, Inc.
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DEMAND FOR JURY TRIAL

Plaintiff Oakley, Inc. hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 13, 2014 By: /s/ Ali S. Razai

Michael K. Friedland

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Attorneys for Plaintiff Oakley, Inc

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